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SUBJECT: A HARD COR BATTLE OVER PROVINCIAL POWERS?

REF: A. BAGHDAD 3949
[1](#)B. BAGHDAD 3730

Classified By: Acting Political Counselor Robert Waller for reasons 1.4
(b) and (d)

[1](#)1. (C) Summary: Of all the legislation that Iraq's Council of Representatives (CoR) will grapple with in 2008, none will do more to shape the future of Iraq politically than the Provincial Powers law. Because Iraq's Constitution is deliberately ambiguous about the balance of power between Iraq's central government and its provinces, the debate over the Provincial Powers law is forcing legislators to define and codify the meaning of Iraqi federalism as never before. At the center of those efforts, ISCI Deputy Bloc leader Hummam Hammoudi is leading an effort to reconcile two competing draft bills. The first, or "CoR Draft," received a first and second reading in early 2007 and generally favors decentralization. The second, or "PMO Draft," was written at PM Maliki's behest and favors stronger central government control. CoR members have yet to resolve three points of contention between the two bills: the appointment and dismissal of governors; the appointment and dismissal of district officials; and control over Iraqi Security Forces (ISF) in times of emergency. These are questions that the Iraqis must resolve among themselves -- trying to impose a USG solution would likely be counterproductive in the short run (suggesting additional changes at this point is likely to only delay the law's adoption) and could well prove disastrous in the long run (if the resultant political structure never achieves popular legitimacy). Rather than advocating specific provisions, Post is therefore encouraging all party blocs to work toward a consensus. If a consensus is not reached and a controversial law is passed by a slim majority, there is a risk that, once the regions law goes into effect in April 2008, provinces may elect to form themselves into regions in order to avoid being subject to the provisions of an unpopular Provincial Powers law. End summary.

A Guide for the Perplexed

[1](#)2. (C) Of all the legislation that Iraq's Council of Representatives (CoR) will grapple with in 2008, none will do more to shape the future of the Iraqi polity than the Provincial Powers law. Because Iraq's Constitution is deliberately ambiguous about the balance of power between Iraq's central government and its provinces, the debate over the Provincial Powers law is forcing legislators to define and codify the meaning of Iraqi federalism as never before.

[1](#)3. (C) Even Maimonides might find himself confused by the multiple iterations of the Provincial Powers law floating around the CoR. Fortunately, there are only three versions worth knowing about, and of those, only two that really count:

-- The CoR Draft. Drafted by the CoR's Committee of Regions and Governorate Affairs, this is the version of the law that

received a first and second reading in early 2007, was updated in the spring to reflect some 600 suggestions encapsulated in a report produced by that same committee, and in mid-summer was unceremoniously shunted off to the Shura Council. It has languished there ever since, due to active opposition from Prime Minister Maliki and his staff and a surprising degree of political acumen from the supposedly apolitical Shura Council (which is apparently loathe to bite the hand that feeds it electricity and other perks).

-- The Prime Minister's Office (PMO) Draft. Unhappy with the CoR draft's emphasis on decentralization, the Prime Minister tapped his Minister of Parliamentary Affairs, Dr. Safa al-Safi, to form a committee and produce an alternative bill favoring a strong central government. Dr. Safa enlisted the aid of the Acting Minister of Provincial Affairs, Hasan al-Sari, as well as legal advisors from the PMO and the Shura Council. This draft is reportedly with the Shura Council as well, and has neither been approved by the Council of Ministers nor formally transmitted to the CoR.

-- The Leaders' Draft. In their August 26 communique, the GOI's political leaders claimed to have reached an agreement on the Provincial Powers law. It quickly became apparent that they had done little more than to agree that, in principle, they should agree to something on Provincial Powers sometime. Fortunately, their deputies continued to meet for a short time afterwards and managed to produce an incomplete version of the law based on the earlier CoR draft. For reasons that remain unhappily vague, this draft was neither completed nor transmitted to the CoR, and now appears to be dead in the water (for more details on the content of the Leaders' draft, see para 13).

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Where the Action Is

14. (C) Based on the above, one might reasonably assume that the Shura Council is the current locus of all activity on Provincial Powers. In reality, the Shura Council is merely acting as a repository -- the legislative equivalent of a parking garage. All of the real action on the Provincial Powers law is taking place among the CoR's various political blocs, with ISCI Deputy bloc leader Hummam Hammoudi (who also chairs the CoR's Constitutional Review Committee) leading an effort to resolve six points of contention between the CoR Draft and the PMO Draft. Of those six points, Hammoudi claims to have successfully brokered compromises on four, leaving (in a mathematically rational universe) two unresolved. Iraq apparently being unfettered by mathematical convention, Hammoudi then enumerated three unresolved issues:

- Who has the power to hire and fire governors?
- Who has the authority to appoint and dismiss district officials?
- Who controls Iraqi Security Forces in the event of a provincial emergency?

In a December 27 meeting (reported septel), Hammoudi said that he would have already ironed out compromises on these final points as well if not for the hajj break that began on December 6. Assuming that an agreement is forthcoming, Post will urge that the resultant compromises be incorporated into the CoR Draft prior to its third and final reading (rather than be enshrined in a brand new draft, which would necessitate three full readings in the CoR).

One PM to Rule Them All . . .

15. (C) The first of Hammoudi's unresolved points, the question of who can hire/fire governors, is an example of artful murkiness by the authors of the Iraqi Constitution. The CoR Draft takes an expansive view of the powers of the

Provincial Council (PC), allowing the PC to elect the Governor from inside or outside its members. The PM, in contrast, is limited to issuing a pro forma decree appointing the Governor to office within fifteen days of the Governor assuming office. The CoR draft includes two options for dismissing a governor. The first requires one-third of the PC's members to request the Governor be fired; this motion must then pass the PC by an absolute majority. The second option allows the CoR to fire a Governor upon the recommendation of the PM and provided that an absolute majority of CoR members agree.

¶6. (C) In contrast, the PMO Draft endows the PM with much stronger authority. Like the CoR Draft, it stipulates that a Governor be elected by the PC and that the PM then issue a decree appointing the Governor to office (Articles 10 and 33). Likewise, the PMO Draft parallels the CoR Draft by allowing the PC to dismiss a governor with an absolute majority of its members. The critical difference between the two is that the PMO Draft allows the PM to remove a governor if asked to do so by as little as one-fourth of the PC members, potentially enabling the PM to exert disproportionate influence in provinces where he enjoys little support on the Provincial Council. (Maliki's failed attempt to oust Basrah Governor Wa'eli (Fadhila) may well have been the inspiration for this particular provision.) In the wrong hands, such power could do much sectarian harm.

¶7. (C) Similarly, at the local council (Qada) or sub-district council level (Nahiya), the CoR Draft gives more authority to the councils in electing or dismissing Chairmen, Deputies, and District/Sub-district Directors. The PMO's version allows for the majority of members of a relevant local council to appoint/elect a District Director or Sub-district Director, but the PM must then make these appointments valid. This level of influence is of considerable concern to certain parties, such as ISCI, which are pushing for more decentralization.

A Bi-opoly on the Use of Force?

¶8. (C) The CoR Draft enables the PCs to approve security plans submitted to them by provincial security institutions in the provinces through the Governor, and to approve the assignment of directors of security-related "apparatus" (sic) based on recommendations by the Governor. It allows for these same security officials to be terminated based on a majority vote of the PC following a request by one-fourth of the PC members, or by the Governor (who must show cause). It also provides the Governor with control over provincial security forces (e.g., the police), with the exception of the Iraqi Army. However, in situations where the Governor

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decides that the provincial security forces under his command are insufficient, he may refer the matter to the PM, laying out his need for additional forces to perform these activities. In emergencies when there is no time to consult the PM, the Governor can temporarily take control as Commander of the ISF in the province.

¶9. (C) The PMO Draft does not permit the Governor to assume control of ISF forces during an emergency in which there is not time to consult the PM. It does, however, give the PM extraordinary oversight in issuing statements/orders to administrative units, which are required for maintenance of security. VP Hashimi is unusually aligned with PM Maliki over this issue of maintaining national control of ISF forces during emergencies, and has mentioned in meetings that this area of the law needs further clarification (ref B).

Other Differences

¶10. (C) Other areas of significant difference between the two

drafts include dissolving PCs, legislative authority, control over financial resources, and approving administrative decisions on provincial boundaries. In the CoR Draft, a PC can decide to dissolve itself by an absolute majority of its members, based on a request of one-third of the members. However, the CoR also has the right to dissolve a PC by an absolute majority vote in the CoR, based on a request by the Governor or one-third of the PC members. In the PMO version, the CoR (based on a request by one-fourth of the PC membership), the PM, or the Governor all have the right to dissolve a PC with an absolute majority vote. (Note: The language is unclear whether it is referring to an absolute majority of the CoR or PC. End note). The PM version, as a result, opens up the opportunity for the CoR and PM to exercise their influence at the provincial level.

¶11. (C) In the area of legislative authority, the CoR Draft allows the PC to issue domestic legislation, regulations, by-laws and systems for regulating financial and administrative affairs, as long as they do not contradict the Constitution or national law. In stark contrast, the PMO Draft allows PCs to propose laws but requires that the proposals be submitted to the Council of Ministers (CoM) for study and -- if the CoM concurs -- action. (Note: The PMO Draft is ambiguous about whether these draft laws would need to be submitted to the CoR or not after the CoM. End note). The net effect is to give the PMO pocket veto authority over any and all provincial legislation.

¶12. (C) In regards to financial resources/budget, the CoR version provides a province with a financial budget from the GOI that is prepared by the Ministry of Finance and approved by the CoR. However, the PMO version only requires that the budget be granted by the GOI, with no mention of CoR approval. Regarding the approval of administrative changes to districts (or sub-districts), and provinces, the CoR version gives this authority to the PCs, based on a recommendation by the Governor. The PMO Draft of the law, however, requires the PC to propose to the CoM any administrative changes to boundaries. This gives the national government (and thus the PM) considerably more authority than the CoR's version, particularly over potentially sensitive boundary issues between provinces, districts, and sub-districts.

Leaders' Draft

¶13. (C) The Leaders' Draft favors decentralization. It provides for Governors to be elected by the PC and to be fired by two-thirds of the PC. In addition, members of the PC (with an absolute majority) and members of the CoM (by simple majority) and one-third of the CoR and Presidency Council have the right to file a case before the Federal Court to remove the Governor for justified reasons. This version gives considerable authority to the PCs in appointing directors of security agencies, but requires that the nominations be submitted to the relevant GOI minister. Control over security forces is not addressed clearly. As for dissolving the Provincial Councils themselves, the Leaders' Draft stipulates that a simple majority of the CoM, the Presidency Council, and one-third of the members of the CoR can submit a lawsuit to the Federal Court in order to dissolve a PC. (Note: The draft law does not specify whether the filing of a lawsuit in federal court will itself be enough to dissolve a PC, or whether a legal finding must be made. End note).

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